

## **2013 DRAFTING REQUEST**

### **Bill**

Received: <b>3/18/2013</b>	Received By: <b>pkahler</b>
Wanted: <b>As time permits</b>	Same as LRB:
For: <b>Duey Stroebel (608) 267-2369</b>	By/Representing: <b>John Soper</b>
May Contact:	Drafter: <b>pkahler</b>
Subject: <b>Courts - miscellaneous/other Local Gov't - misc Real Estate - landlord/tenant Transportation - other</b>	Addl. Drafters: <b>agary</b>
	Extra Copies:

Submit via email: **YES**  
 Requester's email: **rep.stroebel@legis.wisconsin.gov**  
 Carbon copy (CC) to: **Fern.Knepp@legis.wisconsin.gov**  
**Peggy.Hurley@legis.wisconsin.gov**  
**Tracy.Kuczenski@legis.wisconsin.gov**  
**Marc.Shovers@legis.wisconsin.gov**

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No specific pre topic given

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### **Topic:**

Miscellaneous landlord/tenant provisions

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### **Instructions:**

See attached

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/P1	pkahler			_____	sbasford		

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/P3	pkahler 4/26/2013	scalvin 4/19/2013	rschluet 4/19/2013	_____ _____	srose 4/19/2013		
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/2		rschluet 4/29/2013	rschluet 4/29/2013	_____ _____	srose 4/29/2013	lparisi 4/30/2013	Local

FE Sent For:

4/29/2013 12:00:00 AM

&lt;END&gt;

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04-29-2013  
("1/2")

per  
PSK

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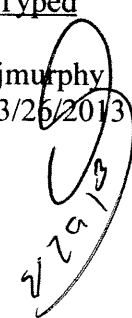
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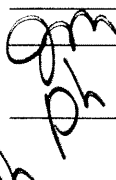
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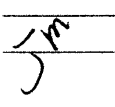

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3/26/2013

/P2

scalvin  
4/8/2013rschluet  
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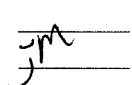
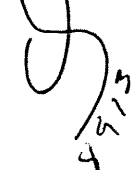
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/?	pkahler	/Pl sac 03/25/2013	Am 3/25	Am 3/26			

FE Sent For:

<END>

3:00

207 North

meeting on wed 27th  
1:00 pmfor 9. what is for it to apply to ~~the~~old leases atrenewal

(check initial day)

3. member of LLC?

4. is there a current stat w/ distribution?

5. Aaron or Eric? allow towing if posted that  
towing may occur (but req. for towing  
would still apply)

2. Cap on damages to ll

Ok w/ this unless it seems to get at  
compelling

check rule

not 3/6/13

## LANDLORD-TENANT LAW LEGISLATIVE GOALS AND PRIORITIES

### ► Summary of February 15, 2013 Meeting

The main purpose of the February 15 meeting was to divide the proposals into a list of trailer bill items and a list of other items for one or more other bills.

### TRAILER BILL

The trailer bill list includes quick corrections and fine-tuning modifications of measures enacted in March 2012.

- ✓ 1. Remove the first sentence of § 704.95 altogether. Would accept its application to § 704.28 (security deposits) and § 704.44 (illegal rental agreement provisions) because some believe that was the original intent.
  - a. ~~§ 704.95 Practices regulated by the department of agriculture, trade and consumer protection. Practices in violation of this chapter may also constitute unfair methods of competition or unfair trade practices under s. 100.20. However, the department of agriculture, trade and consumer protection may not issue an order or promulgate a rule under s. 100.20 that changes any right or duty arising under this chapter.~~
  - b. § 704.28(5) REGULATED PRACTICES Practices in violation of this section may constitute unfair methods of competition or unfair trade practices under s. 100.20.
  - c. § 704.44(10) REGULATED PRACTICES Practices in violation of this section may constitute unfair methods of competition or unfair trade practices under s. 100.20.
- ✓ 2. Modify the crime commission item in § 704.44 to delete (9).
  - a. ~~704.44 Residential rental agreement that contains certain provisions is void. Notwithstanding s. 704.02, a residential rental agreement is void and unenforceable if it does any of the following: ... (9) Allows the landlord to terminate the tenancy of a tenant if a crime is committed in or on the rental property, even if the tenant could not reasonably have prevented the crime.~~
- ✓ 3. 704.08 ~~information~~ check-in sheet. A landlord shall provide to a new residential tenant when the tenant commences his or her occupancy of the premises a ~~standardized information check-in sheet that contains an itemized description of the condition of the premises at the time of check-in which the tenant may use to note any comments about the condition of the premises.~~ The tenant shall be given 7 days from the date the tenant commences his or her occupancy to complete the check-in sheet and return it to the landlord. The landlord is not required to provide the ~~information~~ check-in sheet to a tenant upon renewal of a rental agreement. ...
  - a. The references to the landlord having an obligation to complete the check in sheet and describe the property condition should be completely removed. The terminology should be modified to remove the words "information" and "standardized" as modifiers of "check in sheet."
- ✓ 4. The application of the new Wis. Stat. § 704.28 and its provisions regarding security deposits in commercial scenarios is not acceptable.
  - a. § 704.28(6) RESIDENTIAL TENANCIES The provisions of this section shall apply only to residential tenancies.

Limit to residential 1

- ✓ 5. Wis. Stat. § 704.28(2) **Nonstandard Rental Provisions**: restore ability of tenant to initial or sign (currently must sign) Nonstandard Rental Provisions authorizing withholding from the security deposit.

(2) **NONSTANDARD RENTAL PROVISIONS**. Except as provided in sub. (3), a rental agreement may include one or more nonstandard rental provisions that authorize the landlord to withhold amounts from the tenant's security deposit for reasons not specified in sub. (1)(a) to (e). Any such nonstandard rental provisions shall be provided to the tenant in a separate written document entitled "NONSTANDARD RENTAL PROVISIONS." The landlord shall specifically identify and discuss each nonstandard rental provision with the tenant before the tenant enters into a rental agreement with the landlord. If the tenant signs or initials a nonstandard rental provision, it is rebuttably presumed that the landlord has specifically identified and discussed the nonstandard rental provision with the tenant and that the tenant has agreed to it.

- ✓ 6. Wis. Stat. § 704.07(2)(bm)1 re: the **disclosure of code violations** if the landlord has "actual knowledge" of the violation. Concern that this is problematic from a proof standpoint. The group wants the "actual knowledge" terminology removed and to instead use language along the lines of Wis. Admin. Code § ATP 134.04(2)(a): "All uncorrected building and housing code violations of which the landlord has received notice from code enforcement authorities, and which affect the individual dwelling unit and common areas of the premises." Rewrite Wis. Stat. § 704.07(2)(bm)1 to read something like: 1. The landlord has received notice from code enforcement authorities ~~actual knowledge~~ of the violation.

- ✓ 7. Wis. Stat. § 799.40(1m) **Eviction actions**. Acceptance of Rent: "If a landlord serves a notice terminating the tenancy of a tenant or commences an action under this section against a tenant whose tenancy has been terminated for failure to pay rent, or for any other reason, the action under this section may not be dismissed solely because the landlord accepts past due rent or other payment from the tenant after the termination of the tenant's tenancy."

- ✓ 8. **21 day trigger in § 704.28.**

*or after serving notice*

(4) **TIMING FOR RETURN**. A landlord shall deliver or mail to a tenant the full amount of any security deposit paid by the tenant, less any amounts that may be withheld under subs. (1) and (2), within 21 days after any of the following:

(a) If the tenant vacates the premises on the termination date of the rental agreement, the date on which the rental agreement terminates.

(b) If the tenant vacates the premises before the termination date of the rental agreement, the date on which the tenant's rental agreement terminates or, if the landlord rerents the premises before the tenant's rental agreement terminates, the date on which the new tenant's tenancy begins.

(c) If the tenant vacates the premises after the termination date of the rental agreement, the date on which the landlord learns that the tenant has vacated the premises.

(d) If the tenant is evicted, the date on which the tenant's rental agreement terminates or, if the landlord rerents the premises before the tenant's rental agreement terminates, the date on which the new tenant's tenancy begins.

~~the date on which a writ of restitution is executed or the date on which the landlord learns that the tenant has vacated the premises, whichever occurs first.~~

→ see (b) above



- (5)
- ✓9. **Notice for Disposal of Tenant Personal Property at Inception or Renewal**  
 Wis. Stat. § 704.05(bf)  
 Notice that landlord will not store property. If the landlord does not intend to store personal property left behind by a tenant, except as provided in par. (am), the landlord shall provide written notice to a tenant when the tenant enters into, ~~and~~ or when the tenant renews, a rental agreement that the landlord will not store any items of personal property that the tenant leaves behind when the tenant removes from the premises, except as provided in par. (am).  
 Notwithstanding pars. (a), (am), and (b), if the landlord does not provide to a tenant the notice required under this paragraph, the landlord shall comply with s. 704.05, 2009 stats., with respect to any personal property left behind by the tenant when the tenant removes from the premises.
- ✓10. **Modify Disposal of Personal Property By Landlord in Evictions to Mirror the New § 704.05(5) NEED LANGUAGE**  
 Modify Wis. Stat. § 799.45(3)(am) to provide that when the landlord removes property left on the premises that the landlord can follow a procedure similar to the process for disposal of property found in the revised § 704.05(5). Assume that the landlord's removal of the personal property would be subject to sheriff supervision.

## NEW BILL(S)

### ✓1. Bedbugs.

If the tenant causes an insect/rodent infestation and the landlord can prove that the infestation was caused by the tenant then the tenant is responsible for all costs incurred for eradication and other damages.

Language was added to Wis. Stat. § 704.07(3) as follows: "DUTY OF TENANT. (a) If the premises are damaged by the negligence or improper use of the premises by the tenant, including, but not limited to, an infestation of pests or insects, the landlord may elect to allow the tenant must to repair or remediate the damage and restore the appearance of the premises by redecorating. However, the landlord may elect to undertake the repair, remediation or redecoration, and in such case the tenant must reimburse the landlord for the reasonable cost thereof; the cost to the landlord is presumed reasonable unless proved otherwise by the tenant."

### 2. Prohibit Municipal Limitations on Responsibility for Damages to the Premises.

PROPOSED NEW STATUTE. Wis. Stat. § 66.10xx Responsibility for damage to premises. No city, village or town may enact or enforce any ordinance that places any limitations on a residential tenant's responsibility for, and a residential landlord's right to recover for, any damage, waste or neglect of the premises resulting from the tenant's negligence or improper use of the premises, or for any other costs, expenses, fees, payments or damages for which the tenant is responsible under the rental agreement or applicable law.

### ✓3. Allowing Single Member to Appear for LLC in Eviction/Small Claims Cases

Wis. Stat. § 799.06 Actions; how commenced, pleadings, appearances.

(2) A person may commence and prosecute or defend an action or proceeding under this chapter and may appear in his, her or its own proper person or by an attorney regularly authorized to practice in the courts of this state. Under this subsection, a person is considered to be acting in his, her or its own proper person if the appearance is by a full-time authorized employee of the person. A single member limited liability company may commence and prosecute or defend an action or proceeding under this chapter and appear by its sole member. An assignee of any cause of action under this chapter shall not appear by a full-time authorized employee, unless the employee is an attorney regularly authorized to practice in the courts of this state.

### 4. Prohibit Municipal Requirements for Landlord Distribution of Materials to Tenants

PROPOSED NEW STATUTE: Wis. Stat. § 66.10xx Landlord Distribution of Materials.

(1) In this section, "political subdivision" has the meaning given in s. 66.1011(1m)(e).

(2) A political subdivision may not enact or enforce an ordinance that imposes a requirement on a landlord to distribute communicate to tenants any information or documentation, or to include rental agreement provisions, not required under federal or state law.

### ✓5. Towing vehicles illegally parked in posted area.

Proposed modification to existing statute:

Wis. Stat. § 349.13(3m)

~~A vehicle involved in trespass parking not authorized to park on a private parking lot, private street or private facility~~ may be towed immediately without the permission of the vehicle owner, with or without the issuance of a formal complaint and citation for illegal parking issued by a traffic or police officer where the property is properly posted, or upon formal complaint and a citation for illegal parking issued by a traffic or police officer if not posted. Proper posting includes clearly visible notice that it is private property and that trespassing vehicles not authorized to park can be immediately towed.

✓6. **Allowing Agent or Manager of an Owner to File an Eviction Action**

Wis. Stat. § 799.40 Eviction actions.

(1) When commenced. A civil action of eviction may be commenced by a person entitled to the possession of real property, or such person's agent authorized in writing, to remove therefrom any person who is not entitled to either the possession or occupancy of such real property.

✓7. **Create Civil liability exception for landlord references (PROPOSED NEW STATUTE) (similar to § 895.487 regarding employment references) to provide civil immunity for landlord references.**

895.62 Civil liability exemption; landlord references.

895.62(1) In this section:

(a) "Reference" means a written or oral statement about an applicant for residency whose rental performance includes but is not limited to payment history, conformance to lease requirements, conformance to local and state laws, factual statements regarding any lease enforcement actions including notices given under § 704.19 or § 710.15 and any factual statement about the settlement of a dispute between the landlord and tenant pursuant to any agreement between the landlord and tenant relating to the termination of tenancy.

(b) "Tenant" means a residential tenant regardless of the rental period.

(2) A landlord who, on the request of an applicant for residency or a prospective landlord of the applicant, provides a reference to that prospective landlord is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from all civil liability that may result from providing that reference. The presumption of good faith under this subsection may be rebutted only upon a showing by clear and convincing evidence that the landlord knowingly provided false information in the reference or that the landlord made the reference maliciously.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-1931/7  
PI  
PJK&ARG:.....  
y m not run sac

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 3-22  
(by Tues (26th)  
Wed am,  
please)

Gen cat

- 1 AN ACT...; relating to: miscellaneous provisions related to rental and automobile  
2 towing practices and prohibitions on enacting ordinances that place certain  
3 limitations or requirements on landlords and making an appropriation

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 4 SECTION 1. 20.505 (7) (h) of the statutes is amended to read:  
5 20.505 (7) (h) *Funding for the homeless*. All moneys received from interest on  
6 real estate trust accounts under s. 452.13 for grants under s. 16.307, and all moneys  
7 received under ~~s. ss.~~ 704.05 (5) (a) 2. and 799.45 (3) (am) 4m., for grants to agencies  
8 and shelter facilities for homeless individuals and families under s. 16.308 (2) (a) and  
9 (b).

## SECTION 1

2202 (57) (b); 1981 c. 44 s. 3; 1981 c. 62, 121; 1981 c. 202 s. 23; 1981 c. 314, 374, 391; 1983 a. 27 ss. 439 to 456, 2202 (1); 1983 a. 36, 187, 282, 371, 393; 1985 a. 29, 31, 57, 120, 296, 297, 332; 1987 a. 27 ss. 296n, 296q, 297b, 297d, 299a to 299r, 300a, 301a, 418 to 432; 1987 a. 142, 147, 342, 399; 1989 a. 31, 56, 107, 122, 336, 339, 345, 366; 1991 a. 39 s. 469, 593q to 614; 1991 a. 105, 269, 315; 1993 a. 16 ss. 470g, 470m, 470r, 488 to 506m; 1993 a. 33, 75, 193, 349, 358, 374, 414, 437, 477, 491; 1995 a. 27, 56, 201, 216, 225, 227, 370, 403; 1997 a. 3; 1997 a. 27 ss. 199, 227 to 229m, 233, 666g to 692, 9456 (3m); 1997 a. 237, 283; 1999 a. 5; 1999 a. 9 ss. 508 to 587d, 9401 (2zt), (2zu); 1999 a. 24, 52, 105, 113, 148, 185; 2001 a. 16 ss. 684d, 685d, 800 to 905; 2001 a. 104 ss. 21, 141; 2001 a. 109; 2003 a. 33 ss. 364d, 365d, 369d, 370d, 374d, 376d, 378d, 380d to 384d, 567 to 615f, 639, 640, 642d to 644, 2811 to 2813; 2003 a. 48 ss. 10, 11; 2003 a. 84; 2003 a. 139 ss. 9 to 12; 2003 a. 206 s. 23; 2003 a. 326; 2005 a. 25 ss. 389 to 429m, 2493, 2494, 2495, 9401, 9409; 2005 a. 60, 124, 141, 142, 253, 344, 414, 433; 2007 a. 20 ss. 323, 326, 516e to 542g, 9121 (6) (a); 2007 a. 226; 2009 a. 11, 28, 302, 318; 2011 a. 29, 32 ss. 406, 421m, 435m to 446m, 716m to 747c, 755, 759 to 766; 2011 a. 166, 260.

SECTION 2. 66.0104 (2) (c) of the statutes is created to read:

66.0104 (2) (c) No city, village, town, or county may enact an ordinance that places any limitations on a residential tenant's responsibility, or a residential landlord's right to recover, for any damage, waste, or neglect of the premises resulting from the tenant's negligence or improper use of the premises, or for any other costs, expenses, fees, payments, or damages for which the tenant is responsible under the rental agreement or applicable law.

\*\*\*NOTE: I have included county ordinances in this prohibition. Please let me know if you really do not want to include them.

SECTION 3. 66.0104 (2) (d) of the statutes is created to read:

66.0104 (2) (d) No city, village, town, or county may enact an ordinance that imposes a requirement on a landlord to communicate to tenants any information that is not required to be communicated to tenants under federal or state law.

\*\*\*NOTE: Do you want to limit this to residential landlords and tenants, too?

SECTION 4. 66.0104 (3) of the statutes is renumbered 66.0104 (3) (a) and amended to read:

66.0104 (3) (a) If a city, village, town, or county has in effect on December 21, 2011, an ordinance that is inconsistent with sub. (2) (a) or (b), the ordinance does not apply and may not be enforced.

History: 2011 a. 108.

SECTION 5. 66.0104 (3) (b) of the statutes is created to read:

66.0104 (3) (b) If a city, village, town, or county has in effect on the effective date of this paragraph .... [LRB inserts date], an ordinance that is inconsistent with sub. (2) (c) or (d), the ordinance does not apply and may not be enforced.

*Aravis insert* →

1           **SECTION 6.** 704.05 (5) (bf) of the statutes is renumbered 704.05 (5) (bf) 1. and  
2           amended to read:

3           704.05 (5) (bf) 1. If the landlord does not intend to store personal property left  
4           behind by a tenant, except as provided in par. (am), the landlord shall provide written  
5           notice to a tenant ~~when the tenant enters into, and when the tenant renews, a rental~~  
6           ~~agreement~~ that the landlord will not store any items of personal property that the  
7           tenant leaves behind when the tenant removes from the premises, or if the tenant  
8           is evicted from the premises, except as provided in par. (am).

9           3. Notwithstanding pars. (a), (am), and (b), if the landlord does not provide to  
10          a tenant the notice required under ~~this paragraph~~ subd. 1. as required under subd.  
11          2., the landlord shall comply with s. 704.05, 2009 stats., with respect to any personal  
12          property left behind by the tenant when the tenant removes from the premises.

History: 1993 a. 374, 486; 2001 a. 16; 2003 a. 33; 2005 a. 253; 2011 a. 32, 143.

13          **SECTION 7.** 704.05 (5) (bf) 2. of the statutes is created to read:

14          704.05 (5) (bf) 2. A landlord shall provide the written notice under subd. 1.  
15          when a tenant enters into or renews a rental agreement on or after the effective date  
16          of this subdivision .... [LRB inserts date].

17          **SECTION 8.** 704.07 (2) (bm) 1. of the statutes is amended to read:

18          704.07 (2) (bm) 1. The landlord has ~~actual knowledge~~ received notice of the  
19          violation from a local housing code enforcement agency.

History: 1981 c. 286; 1993 a. 213, 486, 491; 2001 a. ~~103~~; 2011 a. 143.

20          **SECTION 9.** 704.07 (3) (a) of the statutes is amended to read:

21          704.07 (3) (a) If the premises are damaged by, including by an infestation of  
22          insects or other pests, due to the negligence or improper use of the premises by the  
23          tenant, the landlord may elect to allow the tenant must to remediate or repair the  
24          damage and restore the appearance of the premises by redecorating. However, the



1 landlord may elect to undertake the remediation, repair or redecoration, and in such  
2 case the tenant must reimburse the landlord for the reasonable cost thereof; the cost  
3 to the landlord is presumed reasonable unless proved otherwise by the tenant.

History: 1981 c. 286; 1993 a. 213, 486, 491; 2001 a. 103; 2011 a. 143.

4 **SECTION 10.** 704.08 of the statutes is amended to read:

5 **704.08 ~~Information check-in~~ Check-in sheet.** A landlord shall provide to  
6 a new residential tenant when the tenant commences his or her occupancy of the  
7 premises a ~~standardized information~~ check-in sheet that ~~contains an itemized~~  
8 ~~description of the tenant may use to make comments, if any, about~~ the condition of  
9 the premises ~~at the time of check-in~~. The tenant shall be given 7 days from the date  
10 the tenant commences his or her occupancy to complete the check-in sheet and  
11 return it to the landlord. The landlord is not required to provide the ~~information~~  
12 check-in sheet to a tenant upon renewal of a rental agreement. This section does not  
13 apply to the rental of a plot of ground on which a manufactured home, as defined in  
14 s. 704.05 (5) (b) 1. a., or a mobile home, as defined in s. 704.05 (5) (b) 1. b., may be  
15 located.

History: 2011 a. 143.

16 **SECTION 11.** 704.28 (2) of the statutes is amended to read:

17 **704.28 (2) NONSTANDARD RENTAL PROVISIONS.** Except as provided in sub. (3), a  
18 rental agreement may include one or more nonstandard rental provisions that  
19 authorize the landlord to withhold amounts from the tenant's security deposit for  
20 reasons not specified in sub. (1) (a) to (e). Any such nonstandard rental provisions  
21 shall be provided to the tenant in a separate written document entitled  
22 "NONSTANDARD RENTAL PROVISIONS." The landlord shall specifically identify  
23 and discuss each nonstandard rental provision with the tenant before the tenant  
24 enters into a rental agreement with the landlord. If the tenant signs his or her name,

1 or writes his or her initials, by a nonstandard rental provision, it is rebuttably  
2 presumed that the landlord has specifically identified and discussed the  
3 nonstandard rental provision with the tenant and that the tenant has agreed to it.

History: 2011 a. 143.

4 **SECTION 12.** 704.28 (4) (b) of the statutes is amended to read:

5 704.28 (4) (b) If the tenant vacates the premises before the termination date  
6 of the rental agreement or if the tenant is evicted, the date on which the tenant's  
7 rental agreement terminates or, if the landlord rerents the premises before the  
8 tenant's rental agreement terminates, the date on which the new tenant's tenancy  
9 begins.

History: 2011 a. 143.

10 **SECTION 13.** 704.28 (4) (d) of the statutes is repealed.

11 **SECTION 14.** 704.28 (5) of the statutes is created to read:

12 704.28 (5) APPLICATION TO RESIDENTIAL TENANCIES. This section applies to  
13 residential tenancies only.

14 **SECTION 15.** 704.44 (9) of the statutes is repealed.

15 **SECTION 16.** 704.95 of the statutes is amended to read:

16 **704.95 Practices regulated by the department of agriculture, trade**  
17 **and consumer protection.** Practices in violation of ~~this chapter s.~~ 704.28 or 704.44  
18 may also constitute unfair methods of competition or unfair trade practices under s.  
19 100.20. However, the department of agriculture, trade and consumer protection may  
20 not issue an order or promulgate a rule under s. 100.20 that changes any right or duty  
21 arising under this chapter.

History: 2011 a. 143.

22 **SECTION 17.** 799.06 (2) of the statutes is amended to read:

23 799.06 (2) A person may commence and prosecute or defend an action or  
24 proceeding under this chapter and may appear in his, her, or its own proper person

Amend 5-9



1 or by an attorney regularly authorized to practice in the courts of this state. Under  
2 this subsection, a person is considered to be acting in his, her, or its own proper  
3 person if the appearance is by a member or a full-time authorized employee of the  
4 person. An assignee of any cause of action under this chapter shall not appear by a  
5 full-time authorized employee, unless the employee is an attorney regularly  
6 authorized to practice in the courts of this state.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 764 (1975); 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 108; Stats. 1979 s. 799.06; 1987 a. 208; 1991 a. 163; Sup. Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 250; 2001 a. 61.

7 **SECTION 18.** 799.40 (1) of the statutes is amended to read:

8 799.40 (1) WHEN COMMENCED. A civil action of eviction may be commenced by  
9 a person entitled to the possession of real property, or by that person's agent  
10 authorized in writing, to remove therefrom any person who is not entitled to either  
11 the possession or occupancy of such real property.

**History:** 1979 c. 32 s. 66; 1979 c. 176; Stats. 1979 s. 799.40; 1991 a. 39; 1995 a. 289; 2009 a. 2; 2011 a. 143.

12 **SECTION 19.** 799.40 (1m) of the statutes is amended to read:

13 799.40 (1m) ACCEPTANCE OF RENT OR OTHER PAYMENT. If a landlord commences  
14 an action under this section against a tenant whose tenancy has been terminated for  
15 failure to pay rent or for any other reason, the action under this section may not be  
16 dismissed solely because the landlord ~~accepts~~ accepted past due rent or other  
17 payment from the tenant after the termination of the tenant's tenancy or before the  
18 termination of the tenant's tenancy but after the landlord gave the tenant notice of  
19 the termination of the tenant's tenancy under s. 704.17, 704.19, 707.50 (1), or 710.15  
20 (5r).

**History:** 1979 c. 32 s. 66; 1979 c. 176; Stats. 1979 s. 799.40; 1991 a. 39; 1995 a. 289; 2009 a. 2; 2011 a. 143.

21 **SECTION 20.** 799.45 (3) (am) (intro.) of the statutes is renumbered 799.45 (3)

22 (am) 1m. and amended to read:

1           799.45 (3) (am) 1m. When delivering a writ of restitution to the sheriff in  
2 counties other than counties with a population of 500,000 or more, the plaintiff or his  
3 or her attorney or agent may notify the sheriff that the plaintiff or the plaintiff's  
4 agent will be responsible for the removal and storage or removal and disposal of the  
5 property that is found in the premises described in the writ and that does not belong  
6 to the plaintiff. When notifying the sheriff that the plaintiff or the plaintiff's agent  
7 will remove the property, if the plaintiff will store the property for repossession by  
8 the defendant the plaintiff or his or her attorney or agent shall file the bond or  
9 insurance policy required under subd. 5. 6m. e. with the clerk of court that issued the  
10 writ of restitution. If the sheriff is notified that the plaintiff or the plaintiff's agent  
11 will be responsible for the removal and storage or removal and disposal of the  
12 property under this paragraph, the sheriff shall, in executing the writ of restitution,  
13 supervise the removal and handling of the property by the plaintiff or the plaintiff's  
14 agent. ~~The~~ If the plaintiff will store the property for repossession by the defendant,  
15 the sheriff may prevent the plaintiff or the plaintiff's agent from removing property  
16 under this paragraph if the plaintiff or the plaintiff's agent fails to comply with subd.  
17 ~~1., 2., 5. or 6.~~ 6m. a., b., e., or f. or if the plaintiff or the plaintiff's agent fails to exercise  
18 ordinary care in the removal and handling of the property as required under subd.  
19 ~~3.~~ 6m. c.

20           6m. If the plaintiff or the plaintiff's agent remove and store the property under  
21 this paragraph for repossession by the defendant, the plaintiff or the plaintiff's agent  
22 shall do all of the following:

1           **SECTION 21.** 799.45 (3) (am) 1. to 7. of the statutes are renumbered 799.45 (3)  
2           (am) 6m. a. to g. and 799.45 (3) (am) 6m. d. and g., as renumbered, are amended to  
3           read:

4           799.45 (3) (am) 6m. d. Have warehouse or other receipts issued with respect  
5           to the property stored under this ~~paragraph~~ subdivision issued in the name of the  
6           defendant.

7           g. Within 3 days of the removal of the property, notify the defendant under sub.  
8           (4) of the charges imposed under subd. ~~6.~~ 6m. f. and of any receipt or other document  
9           required to obtain possession of the property.

History: 1979 c. 32 ss. 66, 92 (16); 1979 c. 176; Stats. 1979 s. 799.45; 1981 c. 317 s. 2202; 1983 a. 500 s. 43; 1993 a. 486; 1997 a. 317; 2009 a. 322.

10          **SECTION 22.** 799.45 (3) (am) 2m. of the statutes is created to read:

11          799.45 (3) (am) 2m. In the absence of a written agreement between the plaintiff  
12          and the defendant to the contrary, the plaintiff or the plaintiff's agent may, subject  
13          to subds. 3m. and 6m., remove and store or remove and dispose of any personal  
14          property found on the premises that is not the property of the plaintiff in any manner  
15          that the plaintiff or the plaintiff's agent, in its sole discretion, determines is  
16          appropriate.

17          **SECTION 23.** 799.45 (3) (am) 3m. of the statutes is created to read:

18          799.45 (3) (am) 3m. If personal property found on the premises is prescription  
19          medication or prescription medical equipment, the plaintiff or the plaintiff's agent  
20          shall hold that personal property for 7 days from the date on which the plaintiff or  
21          the plaintiff's agent discovers that property. After that time, the plaintiff or the  
22          plaintiff's agent may dispose of the property in the manner that the plaintiff or the  
23          plaintiff's agent determines is appropriate, but shall promptly return the property

1 to the defendant if the plaintiff or the plaintiff's agent receives a request for its return  
2 before the plaintiff or the plaintiff's agent disposes of it.

3 **SECTION 24.** 799.45 (3) (am) 4m. of the statutes is created to read:

4 799.45 (3) (am) 4m. If the plaintiff or the plaintiff's agent disposes of the  
5 defendant's personal property by private or public sale, the plaintiff or the plaintiff's  
6 agent may send the proceeds of the sale, minus any costs of sale and any storage  
7 charges if the plaintiff or the plaintiff's agent has first stored the personalty, to the  
8 department of administration for deposit in the appropriation account under s.  
9 20.505 (7) (h).

10 **SECTION 25.** 799.45 (3) (am) 5m. of the statutes is created to read:

11 799.45 (3) (am) 5m. If the personal property is a manufactured home, as  
12 defined in s. 704.05 (5) (b) 1. a., a mobile home, as defined in s. 704.05 (5) (b) 1. b.,  
13 or a titled vehicle, as defined in s. 704.05 (5) (b) 1. c., the plaintiff or the plaintiff's  
14 agent shall give notice of intent to dispose of the property by sale or other appropriate  
15 means as provided in s. 704.05 (5) (b).

16 **SECTION 26.** 799.45 (3) (am) 7m. of the statutes is created to read:

17 799.45 (3) (am) 7m. Notwithstanding subds. 1m. to 5m., if the plaintiff is a  
18 landlord, the plaintiff or the plaintiff's agent shall remove and store the property as  
19 provided under subd. 6m. unless the plaintiff provided the written notice to the  
20 defendant under s. 704.05 (5) (bf) 1. in the manner provided in s. 704.05 (5) (bf) 2.

21 **SECTION 27.** 799.45 (3) (am) 8m. of the statutes is created to read:

22 799.45 (3) (am) 8m. The power of the plaintiff or the plaintiff's agent to dispose  
23 as provided by this paragraph applies to any property left on the premises by the  
24 defendant, whether owned by the defendant or by others. The power to dispose under  
25 this paragraph applies notwithstanding any rights of others existing under any

1 claim of ownership or security interest, but is subject to s. 321.62. The defendant or  
2 any secured party has the right to redeem the property at any time before the  
3 plaintiff or the plaintiff's agent has disposed of it or entered into a contract for its  
4 disposition by payment of any expenses that the plaintiff or the plaintiff's agent has  
5 incurred with respect to the disposition of the property.

6 **SECTION 28.** 799.45 (3) (am) 9m. of the statutes is created to read:

7 799.45 (3) (am) 9m. This paragraph does not apply to disposal of personal  
8 property remaining in a self-storage unit or space within a self-storage facility  
9 under s. 704.90.

\*\*\*\*NOTE: Expanded s. 799.45 (3) (am) above combines the provisions of s. 704.05  
(5) and s. 799.45 (3) (am). Combining seemed appropriate since s. 799.45 (3) (am) in  
current law provides a process for storage of personal property left by an evicted tenant  
and s. 704.05 (5) provides that a landlord may dispose of property left behind in the  
manner the landlord determines is appropriate, including by storing the property.

10 **SECTION 29.** 895.489<sup>x</sup> of the statutes is created to read:

11 **895.489 Civil liability exemption; tenancy references.** (1) In this section:

12 (a) "Reference" means a written or oral statement about the rental performance  
13 of an applicant for tenancy and may include statements about the applicant's  
14 payment history, conformance to rental agreement requirements, or conformance to  
15 local and state laws; factual statements regarding any rental agreement  
16 enforcement actions, including notices given under s. 704.17, 704.19, or 710.15 (5r);  
17 and factual statements about any dispute settlement between the landlord and  
18 applicant in accordance with any agreement between the landlord and applicant  
19 relating to termination of the applicant's tenancy.

20 (b) "Tenant" means a residential tenant, regardless of the type of tenancy or  
21 rental period.

(2) A landlord who, on the request of a prospective landlord of an applicant for tenancy or on the request of the applicant for tenancy, provides a reference to the prospective landlord is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from all civil liability that may result from providing that reference. The presumption of good faith under this subsection may be rebutted only upon a showing by clear and convincing evidence that the landlord knowingly provided false information in the reference or made the reference maliciously.

**(END)**

Insert 11-8

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1931/P1insAG

ARG:.....

*rm is run*

*Aaron's insert*

1  
2           **SECTION 1.** 349.13 (3m) of the statutes is renumbered 349.13 (3m) (b) and  
3 amended to read:

4           349.13 (3m) (b) ~~No~~ If a private parking area is not properly posted and a vehicle  
5 involved in trespass parking on a is parked in the private parking lot or facility shall  
6 be removed area and is not authorized to be parked there, the vehicle may be removed  
7 immediately without the permission of the vehicle owner, ~~except~~ upon the issuance  
8 of a repossession judgment or upon ~~formal complaint and~~ the issuance of a citation  
9 for illegal parking issued by a traffic ~~or police~~ officer.

**History:** 1973 c. 248; 1975 c. 299; 1977 c. 29 ss. 1654 (3), (8) (a), 1656 (43); 1977 c. 116, 272, 418; 1979 c. 34, 59, 231, 276, 325; 1981 c. 227; 1981 c. 255 ss. 10, 11, 13; 1983 a. 77 s. 15; 1983 a. 213; 1985 a. 29; 1985 a. 87 s. 5; 1989 a. 304; 1991 a. 269, 316; 1993 a. 246; 1995 a. 448; 1997 a. 27, 159, 258; 1999 a. 85; 2003 a. 142; 2005 a. 326; 2009 a. 246; 2011 a. 73.

10           **SECTION 2.** 349.13 (3m) (a) and (c) of the statutes are created to read:

11           349.13 (3m) (a) In this subsection:

12           1. "Private parking area" means any private parking lot, private street, private  
13 parking facility, or other private property where any motor vehicle is or could be  
14 parked.

15           2. "Properly posted" means there is clearly visible notice that an area is private  
16 property and that vehicles that are not authorized to park in this area may be  
17 immediately removed.

18           (c) If a private parking area is properly posted and a vehicle is parked in the  
19 private parking area and is not authorized to be parked there, the vehicle may be  
20 removed immediately without the permission of the vehicle owner, regardless of  
21 whether a citation is issued for illegal parking by a traffic officer.

*(end of aaron's insert)*

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1931/?ins  
PJK:.....

**INSERT 5-9**

\*\*\*\*NOTE: Since you wanted the timing for the return of the security deposit after eviction to be the same as the timing for the return if the tenant vacates early, I combined the two into one. However, this timing will not work for an eviction that occurs because the tenant has held over after the termination of the lease.

**(END OF INSERT 5-9)**



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FROM THE  
LEGISLATIVE REFERENCE BUREAU**

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INSERT 11-8

(PJK)

**SECTION 1. Initial applicability.**

(1) INSECT INFESTATIONS. The treatment of section 704.07 (3) (a) of the statutes first applies to tenancies that are in effect on the effective date of this subsection.

(2) RETURN OF SECURITY DEPOSIT AFTER EVICTION. The treatment of section 704.28 (4) (b) and (d) of the statutes first applies to eviction actions that are commenced on the effective date of this subsection.

(3) APPLICABILITY OF SECURITY DEPOSIT PROVISIONS. The treatment of sections 704.28 (5) of the statutes first applies to tenancies that are in effect on the effective date of this subsection.

(4) VIOLATIONS THAT CONSTITUTE UNFAIR TRADE PRACTICES. The treatment of section 704.95 of the statutes first applies to violations that occur on the effective date of this subsection.

(5) REFERENCES PROVIDED BY LANDLORDS. The treatment of section 895.489 of the statutes first applies to references provided on the effective date of this subsection.

(END OF INSERT 11-8)

PJK

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1931/P1dnAG

ARG: /:....

sac

rm is run

- date -

\* The attached draft includes changes to s. 349.13 (3m), stats. I am not sure of the history of s. 349.13 (3m), stats., but the language in this provision is very unusual. For example, "traffic officer" is a defined term in ch. 349, see s. 340.01 (70), stats., so I have used this term in drafting changes to this provision. Also, a citation serves as a formal complaint, see ss. 345.28 (2) and 345.40, stats., so I have removed the reference to a "formal complaint" in this provision. In this draft, I have not treated s. 349.13 (5), stats. From the drafting instructions, it is not clear how the vehicle removal process would work. Would the property owner call a towing service and have the vehicle towed? If so, who would be responsible for the towing charges if no citation is issued? Under current law, a traffic officer has certain responsibilities intended to facilitate notice to a vehicle owner whose vehicle is towed to certain locations. See s. 349.13 (5) (c), stats. This bill does not impose similar responsibilities on a property owner that has a vehicle towed, since a property owner does not have the same access to DOT's vehicle owner records that a traffic officer has. I also note that s. 349.137, stats., allows municipalities to enact ordinances authorizing parking enforcers to "boot" cars illegally parked on private property and s. 342.40, stats., allows the towing of certain "abandoned" (presumed after 48 hours) vehicles from private property.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1931/P1dn  
ARG:sac:jm

March 25, 2013

The attached draft includes changes to s. 349.13 (3m), stats. I am not sure of the history of s. 349.13 (3m), stats., but the language in this provision is very unusual. For example, "traffic officer" is a defined term in ch. 349, see s. 340.01 (70), stats., so I have used this term in drafting changes to this provision. Also, a citation serves as a formal complaint, see ss. 345.28 (2) and 345.40, stats., so I have removed the reference to a "formal complaint" in this provision. In this draft, I have not treated s. 349.13 (5), stats. From the drafting instructions, it is not clear how the vehicle removal process would work. Would the property owner call a towing service and have the vehicle towed? If so, who would be responsible for the towing charges if no citation is issued? Under current law, a traffic officer has certain responsibilities intended to facilitate notice to a vehicle owner whose vehicle is towed to certain locations. See s. 349.13 (5) (c), stats. This bill does not impose similar responsibilities on a property owner that has a vehicle towed, since a property owner does not have the same access to DOT's vehicle owner records that a traffic officer has. I also note that s. 349.137, stats., allows municipalities to enact ordinances authorizing parking enforcers to "boot" cars illegally parked on private property and s. 342.40, stats., allows the towing of certain "abandoned" (presumed after 48 hours) vehicles from private property.

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mtg w/ John Soper - Rep. Strobel's aide  
 re - 1931 \* Pam 4/2  
 - <sup>towed</sup> vehicle owner's expense →  
 - both to (3m) (b) + (c)

• authorize ~~DOT~~ DOT to do a rule  
 on what parking fees / costs can  
 be charged

• emergency rules → yes  
 • ~~will get back~~

• eliminate language "Issued by a traffic officer"  
 → just put a period

• clarify that removal is by a towing co.  
 at request of parking area  
 owner or owner's agent

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

4-2 John Soper, Aaron Gay, me at 207 North

~~20~~ Sections 1 & 2 → see mark-up

Section 3 → also prohibit requiring <sup>ll to</sup> communicate  
to municipality only if not  
requested ~~in~~ <sup>fed</sup>

or to munic  
info. related to tenants or tenancy

re. NOTE: do not limit to resid. ten.

Sect 8 → just change "and" to "or"  
(“enter” only is ok)

Sect 9 → out

~~8-9~~

“separate written notice”

Sect 8 → change “and” to “or” + add sentence

ll may provide separate written notice if  
has not provided at entering & renewal  
has not occurred

~~Sections 10 & 11~~

at any other time

~~Sections 10 & 11~~ Sections 10 & 11 → see mark-up

Sect 13 → remove “discuss” + “discussed”

re. NOTE: ok as is

Sect 18 → no automatic double damages  
take out first sentence

Sect 19 → member, agent of member, or ~~and~~ an  
authorized employee of the  
person or agent

Sect 21 → remove X refs; remove “solely”

Sect 31 → ok

pers. prop. removal:

§ 799.45

after sheriff removes person from prop,

any prop remaining is considered

abandoned + may be disposed of

in the manner provided in 704.05

just refers to 704.05, do not need to  
reiterate

1 path → current law w/ sheriff doing the removal  
2nd path → ~~§ 799.45~~ notifies sheriff, follows 704.05

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Eff date      <sup>law</sup> 1st <sup>1/1</sup> of 1st month beginning of publication

ordinances that place certain limitations or requirements on landlords, and making an appropriation.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**SECTION 1.** 20.505 (7) (h) of the statutes is amended to read:

20.505 (7) (h) *Funding for the homeless.* All moneys received from interest on real estate trust accounts under s. 452.13 for grants under s. 16.307, and all moneys received under ~~s. ss.~~ 704.05 (5) (a) 2. and 799.45 (3) (am) 4m., for grants to agencies and shelter facilities for homeless individuals and families under s. 16.308 (2) (a) and (b).

**SECTION 2.** 66.0104 (2) (c) of the statutes is created to read:

66.0104 (2) (c) No city, village, town, or county may enact an ordinance that limits a residential tenant's responsibility, or a residential landlord's right to recover, for any damage, waste, or neglect of the premises <sup>that occurs during</sup> ~~resulting from~~ the tenant's <sup>occupancy</sup> ~~negligence or improper use~~ of the premises, or for any other costs, expenses, fees, payments, or damages for which the tenant is responsible under the rental agreement or applicable law.

\*\*\*\*NOTE: I have included county ordinances in this prohibition. Please let me know if you really do not want to include them.

**SECTION 3.** 66.0104 (2) (d) of the statutes is created to read:

1 704.05 (5) (bf) 2. A landlord shall provide the written notice under subd. 1.  
2 when a tenant enters into or renews a rental agreement on or after the effective date  
3 of this subdivision .... [LRB inserts date].

4 SECTION 10. 704.07 (2) (bm) 1. of the statutes is amended to read:

5 704.07 (2) (bm) 1. The landlord has ~~actual knowledge~~ <sup>written</sup> received notice of the  
6 violation from a local housing code enforcement agency.

7 SECTION 11. 704.07 (3) (a) of the statutes is amended to read:

8 704.07 (3) (a) If the premises are damaged ~~by, including by an infestation of~~  
9 insects or other pests, due to the negligence or improper use of the premises by the <sup>action</sup>  
10 tenant, the landlord may elect to allow the tenant must to remediate or repair <sup>action</sup>  
11 damage and restore the appearance of the premises by redecorating. However, the  
12 landlord may elect to undertake the remediation, repair, or redecoration, and in such  
13 case the tenant must reimburse the landlord for the reasonable cost thereof; the cost  
14 to the landlord is presumed reasonable unless proved otherwise by the tenant.

15 SECTION 12. 704.08 of the statutes is amended to read:

16 704.08 ~~Information check-in~~ Check-in sheet. A landlord shall provide to  
17 a new residential tenant when the tenant commences his or her occupancy of the  
18 premises a ~~standardized information check-in sheet that contains an itemized~~  
19 ~~description of the tenant may use to make comments, if any, about~~ the condition of  
20 the premises ~~at the time of check-in~~. The tenant shall be given 7 days from the date  
21 the tenant commences his or her occupancy to complete the check-in sheet and  
22 return it to the landlord. The landlord is not required to provide the ~~information~~  
23 check-in sheet to a tenant upon renewal of a rental agreement. This section does not  
24 apply to the rental of a plot of ground on which a manufactured home, as defined in

action or inaction